IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/08/2004

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

Writ Petition No.30841 of 2002
and
Contempt Petition No.66 of 2003
in
W.P.M.P.No.45083 of 2002
and
W.V.M.P.No.362 of 2003

W.P.No.30841 of 2002
and
Cont.P.No.66 of 2003

P.Jeya .. Petitioner in both petitions

-Vs-

1. Union of India, rep.
by the Joint Secretary
(Revenue),
Govt. of Pondicherry,
Pondicherry.

2. The Tahsildar,
Taluk Office,
Pondicherry. .. Respondents in Writ Petition

1. Udiptha Ray
Joint Secretary
(Revenue),
Govt. of Pondicherry,
Pondicherry.

2. Asokan,
Tahsildar,
Taluk Office,
Pondicherry. .. Respondents in Cont. Petition

Writ Petition filed under Article 226 of the Constitution of India, praying for the relief as stated therein.

Contempt Petition filed under Sections 10 and 12 of the
Contempt of Courts (Act 70/71), praying for the relief as stated therein.

For petitioner : Mr.G.R.Swaminathan

For respondents: Mr.T.Murugesan,
Govt. Pleader (Pondicherry).

:O R D E R

Writ Petition praying to issue a Writ of Declaration,
declaring that Memorandum No.9565/C2/Rev/2000 dated 10.11.2000 issued by the first respondent is unconstitutional and consequently direct the second respondent to issue Community Certificate to the petitioner's son, viz., P.Sivakumar.

2. Contempt Petition praying to punish the respondents herein
for having committed contempt of Court for disobeying the order of this Court dated 29.07.2002 made in W.P.M.P. No.45083 of 2002 in the above writ petition.

3. In the affidavit filed in support of this writ petition,
the petitioner would submit that she is an Adi Dravida of Pondicherry origin, born on 14.12.1960 at Nedungadu Salaipet; that her parents also hail from the Union Territory of Pondicherry; that she got married to one Panneerselvam, who is also belonging to the Adi Dravida community and that he is employed in Government service for more than twenty years; that she gave birth to a male child, viz., P.Sivakumar, on 02.06.1985 at Nedungadu; that the petitioner, her husband and child are residing in Pondicherry all these years in an uninterrupted manner.
4. The petitioner would further submit that while so, when
she applied for the Community Certificate with the second respondent, he expressed his inability to process her application in view of the impugned memo. dated 10.11.2000 passed by the first respondent, Government of

Pondicherry, to the effect that the Community Certificate should be issued based only on the residential status of the applicant's father on the crucial date, that was, on 5.3.1964 and not on the residential status of the mother.

5. The petitioner would further submit that the benefits of
reservation can be availed of only by Scheduled Caste candidates of Pondicherry origin and a migrant cannot claim the same; that the status as to whether one is a person of origin or a migrant is to be decided with reference to the residential status of either of the parents of the candidate on the date when the Presidential order was notified with respect to the Union Territory of Pondicherry, i.e. 5.3.1964; that the Central Government by a number of circulars, one of which is a letter bearing No.B.C. 12025/2/76-SCT(1), dated 22.03.1977, whereby it is clearly stated that in the case of persons born after the date of notification of the relevant presidential order, the place of residence for the purpose of acquiring the

status, is the place of permanent abode of their parents at the time of notification of the presidential order under which they claim to belong to such a caste/tribe; that in fact when the validity of the order was challenged, the Apex Court upheld the same; that the Government of Pondicherry has also issued a number of circulars and G.Os. in this regard; that the memo. dated 3 .8.1995 is very clear that the subject issue has to be decided by verification of the following facts:-

a. that the applicant belongs to the community claimed;
b. that the parents of the applicant belongs to the community claimed.;
c. that the applicant and either of the applicant's parents is residing at Pondicherry since birth;
d. that the applicant's community is included in the Presidential Order specifying the Scheduled caste in relation to Pondicherry.

6. In the last phase of the affidavit, the petitioner would submit that while so, the impugned memorandum came to be issued superseding the above said memo. dated 3.8.1995 with no or better reasons assigned and on such grounds, would pray for the relief extracted supra.

7. While filing the above writ petition, the petitioner has also filed W.P.M.P. No.45083 of 2002 praying to stay the operation of the impugned memo. dated 10.11.2000 pending disposal of the writ petition and this Court has granted ad-interim stay for a period of three weeks, besides issuing notice to the respondents therein. Moreover, in the writ petition itself, this Court has passed orders fixing the date of hearing of the writ petition on 21.8.2002 since certain amount of urgency was involved in the matter.

8. It further comes to be known that the respondents have also filed a petition in W.V.M.P. No.362 of 2003 seeking to vacate the interim stay granted in W.P.M.P. NO.45083 of 2002 and the same is also pending. In the counter affidavit filed along with the said vacate stay petition, the first respondent would submit that the first comprehensive and consolidated order pertaining to issuance of certificate to SC/ST was issued by the Administration (Revenue Department) in G.O.Ms.No.28 dated 2.2.1977 wherein a distinction between origin and migrant members of Scheduled Caste was clearly made out, which was corroborated in the communication of Government of India, Ministry of Home Affairs in their Letter No.BC/16014/1/82-SC&BCD-I dated 22.2.1985 wherein it has been clarified that "a Scheduled Caste/Tribe person who has migrated from the State of Origin to some other state for the purpose of seeking education, employment etc. would be deemed to be Scheduled Caste/Scheduled Tribe of the State of his origin and will be entitled to derive benefits from the State of origin and not from the state to which he has migrated"; that the Government of India has issued guidelines from time to time indicating as to how the scheduled caste certificate should be issued to the persons who are eligible to obtain the same; that the Ministry of Home Affairs in its letter No.BC.120 25/2/76-SCT.I dated 22.3.1977 has clarified that in the case of persons born after the date of notification of the relevant Presidential Order, the Scheduled

Caste/Scheduled Tribe status of such persons would be determined based on the place of permanent abode of their " parents" at the time of notification of the Presidential Order under which they claim to belong to such caste/tribe; that it has also been further corroborated in the letter No.BC-12-25/11/79-SC&BCD.IV dated 29.3.1982 of Government of India, Ministry of Home Affairs, that migrant certificates should be issued to the children of such person whose permanent abode was not in the concerned State/Union Territory on the crucial date of the Presidential Notification on the basis of production of Scheduled Caste/Scheduled Tribe certificates issued to their "parents" from the State of their origin. Subsequently, the Government of India vide letter No.BC/16014/1/82-SC&BCD-I dated 22.2.1985 has issued instructions modifying the earlier instructions issued in Lr. BC-12025/2/76-SCT.I dated 22.3.1977 and BC-12025/11/79-SC & BCD.IV dated 29.3.1982 that the prescribed authority of a State/Union territory administration may issue Scheduled Caste/Scheduled Tribe certificates to a person who has migrated to that State/Union territory on the production of genuine certificate issued to his 'father' by the prescribed authority of the State of the father's origin; that based on the said clarification, the instruction was issued to the certificate issuing authorities that the origin/migrant status of the applicant for the issue of Scheduled Caste certificate should be decided based on the residential status of applicant's father on the crucial date i.e. 5.3.1964 and not on the residential status of mother.

9. The respondents would further submit that the Honourable Supreme Court, in the Action Committee case, has laid down that the Scheduled Caste/Scheduled Tribe persons can get protection/benefits meant for that community in the State of their origin and not entitled to such protective treatment on migration to another state by virtue of Articles 341 and 342 of the Constitution, as per the judgment of the Honourable Supreme Court in Marichandra's case in the year 1990 and therefore, the Government of India, vide letter No.12025/2/76-SCT.I dated 22.3.1977 has clarified that in the case of persons born after the date of notification of relevant Presidential order, regarding the existence of Scheduled Caste/Scheduled Tribe members, the status of such persons so born after the notified date would be determined based on the place of permanent abode of their "parents" at the time of notification of Presidential Order; that the term used in the communication is 'parents' and not 'either of the parents'; that as long as both parents have their permanent place of abode in the concerned State on the crucial date, the off-springs are eligible to derive the benefits and this order was further clarified vide letter No.BC.16014/1/82SC&BCD-I dated 22.2.1985 of the Government of India, Ministry of Home Affairs to the effect that the prescribed authority of such State or Union territory administration may issue Scheduled Caste/Scheduled Tribe certificate to a person who has migrated to another State, on the production of genuine certificate issued to his 'father' by the prescribed authority of the State of father's origin and therefore the certificates are issued to the migrated members based only on the residential status of the father on the date of notification.

10. The respondents would further submit that it has been clarified by the communication dated 22.3.1977 by the Government of India that

residential status of parents i.e. both the parents may be taken into account for deciding origin/migrant status of their children; that by the subsequent communication of the Government of India dated 22.2 .1985, it was clarified that the residential status of 'father' may be taken into account for deciding the origin/migrant status of the children; that the respondent administration issued an order during the year 1995 to issue Scheduled Caste certificate if either of the applicant's parents is residing at Pondicherry since birth but since the said order was not in consonance with the instructions laid down by the Government of India, in their letter dated 22.2.1985, the impugned revised order was issued during the year 2000 to protect the benefit of the Scheduled Caste (origin) candidates based on the Government of India's order as well as based on several judgments pronounced by the Honourable Supreme Court; that 'parents' mean both father and mother and not either father or mother and hence only such persons whose both parents were residing in Pondicherry prior to the crucial date of the notification issued under Article 341 are eligible to get the Scheduled Caste origin certificate and if it is not so, then the residential status of the father alone will be taken into consideration and there is no gender discrimination in the said process and since the petitioner is not at all an aggrieved person, she has no locus standi to represent. On such grounds, the respondents would pray to dismiss the above writ petition.

11. In the above circumstances, the petitioner in the writ petition has come forward to file the contempt petition praying to punish the respondents herein for having committed contempt of Court by disobeying the order of this Court dated 29.07.2002 made in W.P.M.P. No.450 83 of 2002 on averments that the petitioner herein applied for the issuance of such certificate but the respondents, citing the impugned memo. dated 10.11.2000 and pointing out that the earlier memo. dated 0 3.08.1985 has been superseded by the government and refused to issue the Community Certificate, as a result of which, this petitioner was constrained to file the above writ petition seeking the relief extracted supra. The petitioner would also submit that she also filed an interim petition and this Court was pleased to grant interim stay, as per its order dated 29.7.2002, thereby staying the operation of the impugned memorandum.

12. The petitioner has further stated in her above contempt petition that three reminders were also sent seeking Community Certificate from the respondents, who directed the petitioner to approach the Court itself without issuing the same, as a result of which, her son's future is jeopardized; that the deliberate refusal by the respondents is a clear challenge to the majesty of this Court; that the Central Government has issued a letter dated 22.2.1985 modifying the instruction given in the letter dated 22.03.1977 and substituting the one dated 29.03.1982. But the memo. dated 22.2.1985 does not have any bearing on the present case; that the present case is still governed by the letter dated 22.3.1977 which deals with the position of a person born after 1964, whereas the 1985 letter deals with the procedure for issuing Community Certificates to those who have migrated from one State to another.

13. The petitioner, further stating that neither herself nor her son migrated from Pondicherry and that since she was born in Pondicherry

after 1964, his position has to be determined; that till the year 2000, the Government of Pondicherry decided the issue by referring to the residential status of either of the parents; that it is due to the impugned memo. passed in November, 2000, the settled position was upset; that at any cost, her son cannot be denied the benefits of reservation in Pondicherry on the spurious ground that her husband was not residing in Pondicherry in 1964 and hence in the interest of justice, they should be considered as persons of Pondicherry origin. On such grounds, the petitioner would pray to summon the contemners and punish them as prayed for in the contempt petition.

14. In the counter affidavit filed on behalf of the respondents in the above contempt petition, they would submit that pending consideration of the writ petition on its merits, the petitioner was granted an order of interim stay for a period of three weeks; that the impugned memo. dated 10.11.2000 is only a clarification to the previous memo. in reference to the same subject; that the relief prayed for in the writ is to declare the memo. in question to be unconstitutional and consequently directing to issue a Community Certificate to the petitioner's son; that by virtue of the order of stay, a certificate is issued and that would amount to the very relief in the writ petition being granted and nothing survives thereafter in the writ petition; that there is no direction given to the respondent authorities and hence there is no act of contempt committed by the respondents; that such a claim is ill-founded and inasmuch as the entitlement to certificate is involved in the writ petition, that has to be decided by this Court; that when the main issue itself remains under the process of adjudication, the petitioner cannot, by means of obtaining an interim order, seek to get the same relief. Moreover, the averments contained in para.4 of the contempt petition relate to the matter on merit; that however, the respondents would state that they maintained the status quo that prevailed on the date of the interim order without implementing the circular in question, which is impugned herein in the writ petition. On such averments, the respondents would ultimately pray to dismiss the contempt petition.

15. During arguments, learned counsel appearing on behalf of the petitioner would give the facts crisply stating that the writ petition is concerned with the issuance of the Community Certificate on the ground that the petitioner's son is of Pondicherry origin and hailing from Adi Dravida community; that under Article 341 of the Constitution of India, a person can claim reservation benefits only in the State of his/her origin and not in the one they migrated to; that the petitioner was born on 14.12.1960 at Pondicherry and no doubt, the mother is of Pondicherry origin. But, her husband Panneerselvam was born in Tamil Nadu and later got permanently settled at Pondicherry and that their child was born and bred at Pondicherry and continues to live at Pondicherry only.

16. The learned counsel would further argue that the circular dated 22.3.1977, regarding the clarification of the issuance of SC/ST Certificate, was issued by the Central Government, wherein it is contemplated that 'in the case of persons who are born after the date of the notification

of the relevant Presidential Order, the place of residence for the purpose of acquiring SC/ST status, is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a caste/ tribe.

17. Learned counsel would then point out that this position was adopted and followed by the Government of Pondicherry and by memo. dated 3.8.1995, the Government of Pondicherry, Revenue Department, with reference to the said Department's G.O.Ms.No.28, dated 2.2.1977, issued the following clarification:-

"Subsequent to the landmark judgment of the Supreme Court as to deciding the social status of Scheduled Caste/Schedule Tribe persons of origin and migrated, many representations have been received from different forum strongly critising the present pattern of issue of certificates to Scheduled Caste/Scheduled Tribe persons in the Union Territory of Pondicherry. Hence it is advised that discreet enquiry may be conducted in identifying the Scheduled Caste origin and migrated and certificate may be issued accordingly.

While deciding the above it may also be verified whether,

a) The applicant belongs to the community claimed.

b) The parents of the applicant belong to the community claimed.

c) The applicant and the either of the applicant's parents are residing at Pondicherry since birth;

d) The applicant's community is included in the Presidential Order specifying the Scheduled caste in relation to Pondicherry.

that this memo. is superseded and replaced by the impugned memo. dated 10.11.2000 issued by the Government of Pondicherry, wherein, citing the memo. dated 3.8.1995 as the second reference stated wherein, it is further contemplated:-

In supersession of this Department's memorandum 2nd cited, the certificate issuing authorities are hereby directed to follow only the guidelines prescribed in G.O.Ms.No.28 dated 2.2.1977 while deciding the migrant/origin status in respect of Scheduled Caste Certificates. It is informed that the Origin/migrant status of applicants for Scheduled Caste certificates should be decided based on only the residential status of applicants' "father" on the crucial date i.e. 5.3.1964, and not on the residential status of the 'Mother".

It is this memo. dated 10.11.2000, which is impugned in the writ petition, and sought to be declared as unconstitutional with the consequential relief to direct the second respondent to issue the Community Certificate in favour of the petitioner's son, viz., P.Sivakumar, as prayed for in the writ petition.

18. Learned counsel would further argue that the Circular dated 22 .2.1985 is only intended to cover those who have actually migrated and not those who were born at Pondicherry after the Presidential Order; that in the case in hand, the petitioner's husband Panneerselvam migrated from Tamil Nadu to Pondicherry in early 1970s, but his son was not a migrant, nor born outside Pondicherry, but was born at Pondicherry itself. But, as per the

impugned memo. dated 10.11.2000, on the crucial date 5.3.1964, the status of applicants for SC Certificates should be decided based on only the residential status of the applicant's father as on that date and not on the residential status of the mother, which is discriminatory, without reasons and illegal.

19. Learned counsel would further argue that in spite of the stay having been granted by this Court in W.P.M.P. No.45083 of 2002, the respondents have not granted the Community Certificate in favour of the son of the petitioner's status as requested and hence the contempt application for not giving effect to the order passed by this Court and to issue the Certificate, as per the earlier position that was prevalent in the State and hence the contempt petition.

20. In reply, the learned Government Pleader (Pondicherry) would submit that the Circular is based on the Government of India letter dated 22.2.1985; that the notification was issued by the President of India, and the Presidential Proclamation was made on 5.3.1964; that as regards the notification, people belonging to 12 sub-sects and living at Pondicherry are recognized and their status has been decided by their parentage; that in the case in hand, though the mother was born at Pondicherry prior to the cut-off date, was given in marriage to a man outside Pondicherry, and their child born after the cut-off date, is denied the Community Certificate, which the petitioner challenges. Learned Government Pleader would sustain that the circular is a beneficial one and would cite a judgment reported in 1990 (3) S.C.C. 1 30 (Marri Chandra Shekhar Rao vs. Dean, Seth S.G.S. Medical College), wherein it is held:

"Having construed the provisions of Articles 341 and 342 of the Constitution in the manner we have done, the next question that falls for consideration is, the question of the fate of those Scheduled Caste and Schedule Tribe students who get the protection of being classed as Scheduled Caste or Scheduled Tribes in the States of origin when, because of transfer or movement of their father or guardian's business or service, they move to other States as a matter of voluntary
(sic. involuntary) transfer, will they be entitled to some sort of protective treatment so that they may continue or pursue their education. Having considered the facts and circumstances of such situation, it appears to us that where the migration from one State to another is involuntary, by force of circumstances either of employment or of profession, in such cases if students or persons apply in the migrated State where without affecting prejudicially the rights of the Scheduled Castes or Scheduled Tribes in those States or areas, any facility or protection for continuance of study or admission can be given to one who has or migrated then some consideration is desirable to be made on that ground. It would, therefore, be necessary and perhaps desirable for the legislatures or the Parliament to consider appropriate legislations bearing this aspect in mind so that proper effect is given to the rights given to Scheduled Castes and Scheduled Tribes by virtue of the provisions under Articles 341 and 342 of the Constitution. This is a matter which the State legislatures or the Parliament may appropriately take into consideration."

21. In consideration of the facts pleaded, having regard to

the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the petitioner has not only filed the writ petition seeking for a declaration to declare Memorandum No.9 565/C2/ Rev/2000 dated 10.11.2000 issued by the first respondent as unconstitutional, consequently directing the second respondent to issue Community Certificate to the petitioner's son, viz., P.Sivakumar, but has also filed a W.P.M.P. praying for interim stay of the operation of the impugned memo. dated 10.11.2000 pending disposal of the writ petition and she has further filed a contempt petition praying to summon the respondents in the writ petition for having committed contempt of the Court by disobeying the order of this Court dated 29.07.200 2 made in W.P.M.P. No.45083 of 2002 in the said writ petition.

22. Since the writ petition and the contempt petition are interconnected and interrelated to each other and further since the above writ petition is a date fixed one, in the nature of the facts and circumstances of the case, it is necessary to decide both the writ petition and the contempt petition together and hence, this Court has to hear both the matters together so as to pass a common order.

23. Taking up the writ petition first for discussion and decision, it could be assessed that the petitioner, the mother of the male child, viz., P.Sivakumar, who herself was born on 14.12.1960 in the Union Territory of Pondicherry as it was the case of her parents as well, who belonged to Adi Dravida Community of Pondicherry origin and that she got married to one Panneerselvam of the same community and begot a male child, viz., P.Sivakumar on 02.06.1 985 at Nedungadu in the State of Pondicherry; that her husband, who is also belonging to Adi Dravida Community, is employed in Government service for more than 20 years at Pondicherry; that herself, her husband and the child are residing in Pondicherry all these years in an uninterrupted manner.

24. While such being the state of affairs, when the petitioner approached the second respondent Tahsildar for the issuance of the community certified in favour of her son P.Sivakumar, in spite of herself and her husband both belonging to the Adi Dravida Community and herself having been born at Pondicherry to her parents of Pondicherry origin and further, in spite of her family having been settled at Pondicherry and her son being a natural born child of Pondicherry State, the authority refused to issue the community certificate citing the impugned memorandum dated 10.11.2000 under which it is stated that 'the origin/migrant status of applicants for Scheduled Caste Certificate should be decided based on only the residential status of the applicants' "father" on the crucial date, i.e. 5.3.1964,' when the Presidential order was notified with respect to the Union Territory of Pondicherry.

25. Since the husband of the petitioner has been treated as a migrant having come from outside Pondicherry after notification of the Presidential order, giving effect to the impugned memorandum of the Government of Pondicherry, the Community Certificate was denied to the petitioner. While so, when the petitioner applied for the Community Certificate with the second

respondent, he expressed his inability to process her application stating that in view of the impugned memo. dated 10.11.2000 passed by the first respondent, Government of Pondicherry which is to the effect that the Community Certificate should be issued based only on the residential status of the applicant's father on the crucial date, that was, on 5.3.1964 and not on the basis of the residential status of her mother; that the benefits of reservation can be availed of only by Scheduled Caste candidates of Pondicherry origin and a migrant cannot claim the same; that the status as to whether one is a resident by origin or a migrant is to be decided with reference to the residential status of either of the parents of the candidate on the date when the Presidential order was notified with respect to the Union Territory of Pondicherry, i.e. 5.3.1964; that the Central Government, by a number of circulars, one of which is a letter bearing No.B.C.12025/2/76-SCT(1), dated 22.03.1977, whereby it is clearly stated that in the case of persons born after the date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring the status is the place of permanent abode of their parents at the time of notification of the presidential order under which they claim to belong to such a caste/tribe.

26. In fact, the impugned memorandum has been issued by the Government of Pondicherry, thereby superseding yet another Memorandum No.61 75/C2/Rev/95 dated 3.8.1995, according to which the identification of the scheduled caste origin/migration could be done on verification of certain factors such as (i)whether the applicant belongs to the community claimed,(ii)whether the parents belong to the community claimed, (iii)whether the applicant and either of the applicant's parents are residing in Pondicherry since birth and (iv)whether the applicant's community is included in the Presidential Order specifying the scheduled caste in relation to Pondicherry.

27. The above said memorandum dated 3.8.1995 has been superseded by the impugned memorandum dated 10.11.2000 and no mention need be necessary that it is an executive order, not being one issued by or in the name of the Governor and in fact, by this impugned memorandum, the earlier memorandum dated 3.8.1995 has been superseded, thereby informing that 'the origin/migrant status of applicants for issuing Scheduled Caste Certificates should be decided based on only the residential status of applicants' "father" on the crucial date, i.e. 5.3.1965, and not on the residential status of their "mother"'.

28. The big question that is to be solved at the outer periphery of deciding the subject matter is whether the memorandum issued earlier giving expression to the G.O. issued under the authority and in the name of the Governor or any of its ingredients could be superseded by a memorandum of the Government of Pondicherry, as it has been done in the case in hand and whether the same could be sustained in law particularly in the context of the relevant constitutional provisions and the other laws relating to the subject matter. In the above circumstances, is it not amounting to, testifying the validity of the very G.O. issued in the name of the Governor so as to extract the guidelines prescribed in the earlier memorandum and would

it not amount to the Government acting by annulling or modifying certain principles of the G.O. by a simple memorandum and whether it is permissible in law and whether it is legal. This Court is of the firm view that a G.O. can have a over-riding effect on a memorandum and not on the vice versa, since a memorandum is an executive instruction without having the legal force as it is in the case of a G.O. regularly issued by the order and in the name of the Governor. Furthermore, once the executive order is issued in the name of the Governor, it cannot be modified or altered or annulled or cancelled by yet another executive order not having been issued in the name of the Governor, and therefore, it is safe to conclude that in the light of the above proposition of law, the very act of superseding the earlier memorandum dated 3.8.1995 by the memorandum impugned herein itself is neither proper nor for any good reason assigned nor based on any principle of law, and therefore, the impugned order since being bereft of legal force nor based on any tangible reason, it is difficult to withhold the same.

29. In this case, the Scheduled Caste Certificate is sought for the son by the mother as the applicant and as a resident by origin and as a member of the Scheduled Caste community of Pondicherry, whereas, according to the contentions of the respondents, the child's father, though belonging to the same Adi Dravida com munity, to which the mother also belongs, became the resident of Pondicherry only by marriage with the petitioner and he being a migrant from outside, as per the meaning of the impugned memorandum, the minor son of the petitioner, viz. P. Sivakumar, is not entitled to a Scheduled Caste Certificate. On the contrary, it is argued on the part of the petitioner that the very Presidential Order notified with respect to the Union Territory of Pondicherry dated 5.3.1964 serving as the cut-off date for the determination of the scheduled caste candidate of Pondicherry origin, particularly for migrants from other States of the same community cannot be sustained in law; that the status as to whether one is a resident by origin or a migrant is to be decided with reference to the residential status of either of the parents of the candidate even if it is on the date when the Presidential order was notified with respect to the Union Territory of Pondicherry, as it has been decided for verification as per the memo. dated 3.8.1995, thus giving effect to the G.O. dated 2.2.1977 and it cannot be in the line of the impugned memorandum, taking into consideration of the status of origin or migrant of the father alone, discarding the mother, and such

classification is neither reasonable nor could it be sustained in law or under the Constitution, and therefore, the impugned memorandum has to be declared void and illegal, thus upholding the earlier memorandum issued.

30. But on the part of the respondents, it would be argued to the effect that a comprehensive and consolidated order pertaining to the Scheduled

Caste/Scheduled Tribe was issued by the Administration in G.O. Ms.No.28 dated 2.2.1977, wherein a distinction between "origin" and " migrant" members of Scheduled Caste was clearly made out, which corroborated in the communication in the Government of India Letter No.BC/16014/1/82-SC&BCD-I dated 22.2.1985,

thereby clarifying that a Scheduled Caste/ Scheduled Tribe person who has migrated from the State of his origin to some other State for the purpose of seeking education, employment, etc. would be deemed to be SC/ST of the State of his origin and will be entitled to derive benefits only from the State of his origin and not from the State of which he has migrated; that according to the Government's clarification in letter dated 22.3.1977 that in the case of persons born after the notification of the Presidential order, the Scheduled Caste status of such persons would be determined on the basis of permanent abode of their parents at the time and notification of the Presidential Order, followed by another letter dated 29.3 .1982 of the Government of India thereby stating that the migration certificates should be issued to the children of such persons whose permanent abode was not in the State or the Union Territory on the crucial date of the Presidential notification on the basis of the production of the Scheduled Caste Certificate issued to their parents from the State of their origin and thereafter, many instructions

have been issued by the Government of India by its letter dated 22.2.1985 thereby modifying the earlier instructions issued in letters dated 22.3.1977 and 29.3.1982 regarding issuance of the migrant certificate; that the prescribed authority under the Union Territory Administration may issue Scheduled Caste Certificate to a person who has migrated to that Union Territory on production of the certificate issued to his "father" by the prescribed authority of the State to the father's origin and only based on the said clarification, instructions have been issued to the certificate issuing authorities to issue the Scheduled Caste Certificate based on the residential status of the applicant's father on the crucial date, i.e. 5.3.1964 and not of the " mother". Even as laid down by the Apex Court in the Action Committee Case and the Government's clarification by its letter dated 22.3.1977, the status of the persons born after the date of the notification would be based on the place of permanent abode of their parents.

31. The further case of the respondents is whether it is the Action Committee Case or by virtue of Articles 341 and 342 of the Constitution of India or even by the Judgment of the Apex Court in Marri Chandra Shekar Rao vs. Dean, Seth S.G.S. Medical College (supra), as clarified

by the Government of India letter dated 22.3.1977, the status of persons born after the date of the notification would be determined on the basis of the place of permanent abode of their parents at the time of notification of the Presidential Order; that the term used is " parents" and not either of the parents and this has only been clarified vide letter dated 22.2.1985; that as early as on 22.2.1985, the Government clarified that the residential status of the father may be taken into consideration for deciding the origin/migrant status of the children; that the respondents/ Administration issued an order during the year 1995 for the issuance of the Scheduled Caste Certificate if either of the applicants' parents is residing at Pondicherry since birth, which has deviated from the consonance of the instruction leading to the former letter dated 22.2.1985; that many Judgments of the Supreme Court have held that parents means both father and mother and not either father or

mother, and therefore, only the children of those parents who were residing in Pondicherry prior to the crucial date of the notification would be entitled to get the Scheduled Caste origin certificate and if it is not so, then the residential status of the father alone will be taken and there is no gender discrimination in the said process and since the petitioner is not an aggrieved person, she has no locus standi to represent her son.

32. Assessing all the above factors and to put them in a nutshell, relating to the question of issuance of the Scheduled Caste Certificate in favour of the children of the parents of the origin of Pondicherry State on the date of the notification of the Presidential Order, migrants from other States on the date of the said notification means whether both the parents, on the date of the said notification should have been born and continue to reside in Pondicherry, as it is advocated on the part of the respondents here or in the case of any one of the parents whose origin is from outside the Pondicherry limits, whether the claim of Scheduled Caste Certificate should be rejected in toto and whether such rejection is reasonable within the meaning of Articles 14 and 15 of the Constitution of India, or whether either father or mother of the same Adi Dravida community hails from outside the territorial limits of Pondicherry and by virtue of marriage with the other spouse comes and lives at Pondicherry and gives birth to children and in such event by virtue of the other spouse being an origin of Union Territory of Pondicherry whether the children born to them in spite of having been born to parents of Adi Dravida community should forego their right to get a Scheduled Caste Certificate just for the simple reason that it is the origin of the father that would only be taken as a criteria and not the mother as per the impugned memorandum and in such event, such criteria fixed by the Government interpreting the G.O. and superseding the earlier memorandum issued dated 3.8.1995 which insisted that if either of the parents has the origin at Pondicherry, it is sufficient for their children to get a Scheduled Caste Certificate is within the parameters of the law and the constitutional rights guaranteed under the relevant Articles 14 and 15 of the Constitution of India, and therefore, it is necessary to have a little discussion on these Articles.

33. Article 14 deals with equality before law and equal protection of laws. The concept of equality and equal protection of laws guaranteed by Article 14 in its proper spectrum encompasses social and economic justice in a political democracy. It is further stressed that equal protection extends to privileges offered by the State granting licences, quotas, giving jobs, issuing certificates, etc. and that there should be no discrimination between one person and another, needless to mention that the term "person" employed in this Article means and includes both male and female human beings. While such being the equality before law and the equal protection of laws as enshrined in Article 14 of the Constitution of India, it is Article 15 of the Constitution of India which gives still more expression to the scope of equality and equal protection, prohibiting discrimination on grounds of religion, race, caste, sex or place of birth and this Article eliminates all kinds of discriminations, including gender discrimination and place of birth. So far as this Article is concerned, the law is declared under Article 15(1) of the Constitution of India and it is a constitutionally guaranteed right. But for this rule Article 15(4) of the Constitution of

India is an exemption whereunder the State has a power for making special provisions for the advancement of any socially and educationally backward classes of Citizens or for the Scheduled Caste and Scheduled Tribes. Even barely accepting Article 15(4) of the Constitution of India, the State empowers to make special provisions for the advancement of socially and educationally backward classes or for the Scheduled Caste and Scheduled Tribes and regarding sex, Article 15 of the Constitution of India still persists, whereunder no discrimination could be made.

34. In the given case, Government Order has been passed in exercise of power under Article 162 of the Constitution of India and it is an executive order, which could be issued only in the name of the Governor. The executive order issued in the name of the Governor cannot be modified by another executive order, not being issued in the name of the Governor. Earlier memorandum dated 3.8.1995 giving clarification to the Government Order, thereby treating the male and the female on par with each other has been modified by the second memorandum, which is impugned herein, to the effect that it is the origin of the father and not that of the mother, which could be the criteria for the issuance of the scheduled caste certificate in favour of the children born to the parents of different origin on the relevant date of notifying the order issued by the President of India. Reading the Articles 14 and 15 of the Constitution of India it could be found that genderwise there cannot be any discrimination between the parents of the child praying for the issuance of the scheduled caste certificate and it is the only possibility in this circumstance, regarding the subject matter is to accept the earlier memorandum dated 3.8.1995, which has been passed inconsonance with the Government Order, whereby in the case of persons born after the date of notification of the Presidential Order, the place of residence for the purpose of acquisition of the status, is the place of permanent abode of either of their parents at the time of notification of the Presidential Order, based on which the Scheduled Caste certificate could be issued to their children and in the given case, since the mother has the origin of Union Territory of Pondicherry, which is an admitted fact on the part of the respondents, regardless of the fact that the father on the date of notification of the Presidential Order since being a migrant, which is immaterial and since Articles 14 and 15 of the Constitution of India as above discussed, there cannot be any discrimination among sex, which has been specifically declared under Article 15(1) of the Constitution of India.

35. The Constitution of India forbids discrimination, but promotes reasonable classification. In the case of issuance of the scheduled caste certificate in favour of the son of the petitioner, she being the mother and in spite of herself being the origin and continuing to be the resident of Pondicherry particularly, on the relevant date of notification of the Presidential Order, on 5.3.1964 citing the impugned Government Order and stating that the son of the petitioner since did not have the same status particularly on the crucial date of the Presidential Order, he is denied of his due in the matter of issuance of the scheduled caste certificate in his favour, in spite of both the parents belonging to the Adi Dravidar Community is the grievance of the petitioner. In these circumstances, and in view of the position of law declared on the subject by Articles 14 and 15 of the

Constitution of India on par way in the equal manner giving equal protection and further prohibiting the kinds of discrimination as found under Article 15(1) of the Constitution of India, particularly the discriminations on sex and therefore, only in the earlier Government Order dated 3.8.1995 giving equal importance to the father and the mother entitling the child to get the scheduled caste certificate could be upheld, since being reasonable classification, no mention need be made that the impugned memorandum dated 10.11.2000, which is discriminatory against the female, giving credence only to the male and suppressing the rights of the female and since there cannot be any such discrimination since it is as bad as imposing a condition that the mother of the child alone should be the origin of the Pondicherry State on the crucial date, which would again be discriminated and therefore, it is only desirable and except within the meaning of the Articles 14 and 15 of the Constitution of India to empower either of the parents as the requirement for the issuance of the scheduled caste certificate ie., the origin of either the

father or the mother on the crucial date of notification and Presidential Order, which would alone serve the ends of justice and hence the following order:

36. In result,
(i) for all the above discussions held, the above writ petition stands allowed;
(ii) the impugned memorandum issued by the first respondent in No.9 565/C2/Rev/2000 dated 10.11.2000, since being discriminatory within the meaning and import of Articles 14 and 15 of the Constitution of India, is declared unconstitutional;
(iii) The earlier memorandum dated 3.8.1995 requiring the issuance of scheduled caste certificate, the origin of either, father or mother of the child seeking such certificate, since being a reasonable order within the ambit of the relevant Articles of Constitution, the same is declared valid;
iv) the respondents are directed to immediately process the representation of the petitioner seeking the scheduled caste certificate in favour of her son P.Sivakumar as a scheduled caste of Union Territory of Pondicherry issuing the certificate, giving effect to the memorandum dated 3.8.1995 within 30 days from the date of receipt of a copy of this order, provided the other usual requirements are satisfied;
(v) Consequently, Contempt Petition No.66 of 2003 praying to punish the respondents for having committed contempt of court for disobeying the order of this court dated 29.07.2002 made in W.P.M.P.No.45083 of 2002 in W.P.No.30841 of 2002 stands closed and the contemners are discharged from the contempt proceedings.
(vi) however, in the circumstances of the case, there shall be no order as to costs.
(vii) consequently, no orders are necessary in W.P.M.P.No.45083 of 2002 and W.V.M.P. No.362 of 2003 and they are closed.

Index :yes

Website:yes
Gs/tsv.
tsv.

To

1. The Joint Secretary
(Revenue),
Union of India,
Govt. of Pondicherry,
Pondicherry.

2. The Tahsildar,
Taluk Office,
Pondicherry.

3. Udiptha Ray
Joint Secretary
(Revenue),
Govt. of Pondicherry,
Pondicherry.

4. Asokan,
Tahsildar,
Taluk Office,
Pondicherry